

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

No. 10-08-90091

Before **HENRY**, Chief Judge.

ORDER OF DISMISSAL

Complainant has filed a complaint of judicial misconduct against a district judge in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “Misconduct Rules”); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.*, and 3) the “Breyer Report,” a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled *Implementation of the Judicial Conduct and Disability Act of 1980*. The Breyer Report may be found at: <http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf>. To the extent that any relevant prior decisions of the full Judicial Council of this circuit consistent with those authorities exist, they may also govern my consideration of this complaint.

Complainant has received or has access to a copy of the misconduct rules. In accord with those rules, the names of the complainant and subject judge shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant takes issue with the subject judge's rulings on complainant's underlying habeas case, contends that the subject judge is part of a "Huge Racketeering organization," and asserts that the federal courts and judges are "crooks." To the extent that complainant takes issue with the judge's rulings, these claims are not cognizable here. Claims that are "directly related to the merits of a decision or procedural ruling" are not misconduct under the applicable rules. *See* Misconduct Rule 3(h)(3)(A). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2. Therefore, claims related to the merits of complainant's habeas case are dismissed. Misconduct Rule 11(c)(1)(B).

While claims of conspiracy can state a valid claim for misconduct even when the alleged conspiracy relates to a judge's ruling, *see* Commentary to Misconduct Rule 3, this conspiracy claim fails because it is completely unsupported. The Misconduct Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." Misconduct Rule 11(c)(1)(D). Complainant has not done so here.

Our files indicate that this is complainant's third misconduct complaint, and the second one against this subject judge alleging unsupported claims of conspiracy in connection with complainant's habeas case. Complainant should be aware of Misconduct Rule 10(a), which sets out procedures and standards for the

imposition of limitations on complainants who file repetitive, harassing, or frivolous complaints.

This complaint is dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judge and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in Misconduct Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. *Id.*

So ordered this 11th day of November, 2008.

/s/ Robert H. Henry

Honorable Robert H. Henry
Chief Circuit Judge